

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONALD TRIMBLE,

Plaintiff,

vs.

MARTIN O'MALLEY, Commissioner
of Social Security,

Defendant.

8:23-CV-161

ORDER

This matter is before the Court upon the Plaintiff's unopposed motion for award of attorney fees pursuant under the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#) ([filing 23](#)), seeking an award of fees and expenses in the amount of \$4,120.38, which represents 15.2 hours of work at a rate of \$244.63 per hour, and a filing fee of \$402.¹ [Filing 23-3](#).

The Court has determined that plaintiff was the prevailing party in this action, as the application for fees was filed in a timely fashion,² and the Commissioner's decision was remanded to the Commissioner for further proceedings on the government's concession that the position of the Commissioner was not substantially justified because the administrative law

¹ The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) has been adjusted to account for inflation.

² An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See [Pottsmith v. Barnhart](#), 306 F.3d 526, 527-28 (8th Cir. 2002); see also [Shalala v. Schaefer](#), 509 U.S. 292, 302 (1993); [Melkonyan v. Sullivan](#), 501 U.S. 89, 94-97 (1991).

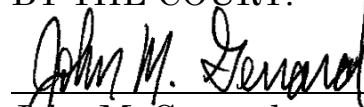
judge made findings that were not supported by substantial evidence. See *Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees.

IT IS ORDERED:

1. The plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (filing 23) is granted.
2. By separate document, the Court shall enter judgment for the plaintiff and against the defendant providing that the plaintiff is awarded attorney fees of \$3,718.38 and costs of \$402.
3. That sum shall be sent to plaintiff's counsel, Mr. Kappelman, who shall be responsible for refunding the fee award under the Equal Access to Justice Act to the plaintiff and remitting to Mr. Cuddigan his portion of the award.

Dated this 20th day of February, 2024.

BY THE COURT:



John M. Gerrard
Senior United States District Judge